



THE OFFICE OF
SUSAN K. MLADENOFF
PROSECUTING ATTORNEY
CALHOUN COUNTY

Calhoun County Justice Center
161 E. Michigan Ave.
Battle Creek, MI 49014-4066
Phone: (269) 969-6980
Fax: (269) 969-6967

EUSEBIO SOLIS
CHIEF ASSISTANT
PROSECUTING ATTORNEY

November 29, 2010

Mr. Corbin Davis
Michigan Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909



Re: Administrative File No. 2009-19

Dear Mr. Davis and Justices of the Court:

I am writing to express my opinion in favor of adopting MCR 6.502(H). This proposed time limitation for motions for relief from judgment is necessary to prevent further devaluation and degradation of the finality of judgments and basic premises of our justice system. Principles as basic as the jury's verdict and the criminal defendant's expression of his own guilt as being determinative of that guilt are placed in jeopardy when there is no finality. Principles which should be axiomatic, such as a person who is convicted of a crime is no longer entitled to the presumption of innocence, are undermined when the determination of guilt is considered simply a starting point for the appellate process which is about to unfold.

A prosecutor or victim's advocate should be able to look a victim in the eye and tell them when the appellate process will be over. For example, leaving an oral argument in the Michigan Court of Appeals a few years ago, I was greeted by a couple who introduced themselves to me as the grandparents of the victim whose assailant's appeal was just heard by the court. They asked me when the appeals would be over; when could they stop expecting to receive letters from our office advising them of another proceeding or event; when could they read the paper or watch the news without possibly seeing the face of their granddaughter's murderer. There should be a decent answer to give them. Under the current rules, there is no limit to when a person who has been determined guilty beyond a reasonable doubt may request relief from judgment. I should be able to leave court and tell a victim's family when the letters will stop. Instead, what I must say now sounds woefully inadequate to my own ears as I say, "I don't know . . . it depends . . ."

More practically, there is no such thing as a closed file since a defendant may file a motion for relief from judgment at any point in time. My priorities are forcefully shifting. In a time of reduced resources, I find myself devoting more time to long-delayed motions for relief from judgment than ever before. A defendant is entitled to one full and fair appeal. He or she absolutely should get that, and the people of this state should be represented during that appeal as

well. I also agree that cases raising legitimate claims of newly discovered evidence should be permitted. The proposed rule does not implicate these cases.

Justice is not served by having an innocent person incarcerated. I absolutely agree with this premise. However, people lie. People manipulate. People deceive even themselves. It takes time and experience to appreciate these basic principles. The first post-conviction DNA case I worked on is a good illustration of this. The defendant was jury-convicted but continued to claim he was innocent. He had the support of his family and perceptibly a large section of the community. After receiving a request for DNA testing, I reviewed the file. Based on what I read in the file alone it seemed painfully obvious that there was ample support for the jury's verdict, despite the lack of DNA testing. Therefore, I did not agree to testing. The courts disagreed and testing was conducted. In spite of his claims of innocence and demand for DNA testing, the test results confirmed the defendant's guilt. In a short follow-up news article I read that the defendant apologized for lying to his family and supporters. No one wants to believe that a loved one has committed a heinous crime, but it does happen and that fact must be accepted at some point.

In order to maintain system integrity, finality should be a goal of the entire justice system. No one's interests are served by infinite appeals or lack of clarity in the rules. There will always be exceptional cases, but the system allows for consideration of these exceptional circumstances when they arise. The Court should adopt MCR 6.502(H).

Sincerely,



Jennifer Kay Clark